

EXHIBIT A

In the Matter Of:

USA vs

Google

JAMES AVERY

August 16, 2023



Page 1	Page 3
<p>1 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA</p> <p>2 -----X</p> <p>3 UNITED STATES OF AMERICA, et al, 4 PLAINTIFF, 5 -against- Civil 1:23-cv-00108 6 GOOGLE LLC, 7 DEFENDANT. 8 -----X</p> <p>9</p> <p>10 VIDEOTAPED DEPOSITION OF JAMES H. AVERY 11 Robinson Bradshaw 12 1450 Raleigh Road, Suite 100 13 Chapel Hill, North Carolina 27518 14 Wednesday, August 16, 2023 15 10:10 a.m.</p> <p>16</p> <p>17</p> <p>18 Reported by: Cindy A. Hayden, RMR, CRR 19 JOB #: 2023-90795</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I N D E X</p> <p>2 PAGE</p> <p>3 EXAMINATION BY MS. AGNEW 5 4 EXAMINATION BY MS. MORGAN 53 5 EXAMINATION BY MS. AGNEW 86</p> <p>6</p> <p>7 NEWLY MARKED EXHIBITS</p> <p>8</p> <p>9 NUMBER DESCRIPTION PAGE</p> <p>10 EXHIBIT 1 Emails, top one dated 4/25/19, 30 Subject: Question about your 11 tweet:), Bates KVL00000945-947 12 EXHIBIT 2 Emails, top one dated 2/5/20, 54 Subject: WSJ Article, Bates 13 KVL00000934 14 EXHIBIT 3 Document titled What are the 73 Main Doubleclick Alternatives? 15 A 2023 Guide, dated 8/5/19 16 EXHIBIT 4 Twitter exchange dated April 94 24, 2019</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 A P P E A R A N C E S : 2 3 U.S. DEPARTMENT OF JUSTICE Antitrust Division 4 450 5th Street NW Washington, DC 20530 5 BY: ISABEL AGNEW, ESQ. JEFFREY VERNON, ESQ.</p> <p>6</p> <p>7 DEPARTMENT OF JUSTICE ATTORNEY GENERAL Special Deputy Attorney General 8 Consumer Protection 114 W. Edenton Street 9 Raleigh, NC 27602-0629 BY: JONATHAN R. MARX, ESQ.</p> <p>10</p> <p>11 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Attorneys for Google 12 1285 Avenue of the Americas New York, NY 10019-6064 13 BY: ERIN J. MORGAN, ESQ. CARTER GREENBAUM, ESQ. (Remotely)</p> <p>14 ~ And ~</p> <p>15</p> <p>16 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP 2001 K Street, NW Washington, DC 20006-1047 17 BY: ERICA SPEVACK, ESQ. (Remotely) ELIZABETH NORFORD, ESQ. (Remotely)</p> <p>18</p> <p>19 ROBINSON BRADSHAW Attorneys for Kevel/James Avery 20 1450 Raleigh Road Suite 100 21 Chapel Hill, NC 27517 BY: EMILY J. SCHULTZ, ESQ.</p> <p>22</p> <p>23 ALSO PRESENT: Kyle Roeder, Videographer Leslie Pierce-Connor, 24 Kevel in-house counsel 25</p>	<p>1 P R O C E E D I N G S 2 *** 3 THE VIDEOGRAPHER: We are now on 4 record. My name is Kyle Roeder. I am the 5 videographer retained by Lexitas. This is the 6 video deposition for the court -- for the 7 United States District Court for the Eastern 8 District of Virginia. Today's date is August 16th, 9 2023, and the video time is 10:11 a.m.</p> <p>10 The deposition is being held at 11 Robinson Bradshaw, 1450 Raleigh Road, Suite 100, 12 Chapel Hill, North Carolina, 27517, in the matter 13 of United States, et al., v. Google LLC, 14 Civil Action Number 1:23-CV-00108. The deponent is 15 James Avery.</p> <p>16 All counsel will be noted on the 17 stenographic record. Would all counsel please 18 identify themselves.</p> <p>19 MS. SCHULTZ: I'm Emily Schultz from 20 Robinson Bradshaw on behalf of the witness.</p> <p>21 MS. PIERCE-CONNOR: Leslie 22 Pierce-Connor, in-house counsel, on behalf of the 23 deponent.</p> <p>24 MS. AGNEW: Isabel Agnew, here on 25 behalf of the United States.</p>

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1 **websites. And so I was building websites in high**
 2 **school and then partially through college. Went to**
 3 **Dell, moved up to be a programmer at Dell, and then**
 4 **continued my career as a developer.**
 5 Q. And where are you currently employed?
 6 **A. Adzerk or Kevel.**
 7 Q. Where were you employed prior to Kevel?
 8 **A. I -- I worked for a company called**
 9 **Infozerk, which was an LLC consulting company that**
 10 **I founded.**
 11 Q. Did you work anywhere else between Dell
 12 and Infozerk?
 13 **A. No. Wait. No, I'm sorry. Yes.**
 14 **Between -- between Dell and Infozerk, yes. I**
 15 **worked at a company called G.A. Sullivan that was**
 16 **acquired by Avanade. And then I also worked for a**
 17 **company called Schawk, S-C-H-A-W-K, in Cincinnati.**
 18 Q. So what was your role at Dell?
 19 **A. I started out as an -- in support and**
 20 **then moved on to be a software developer.**
 21 Q. And briefly, what were your
 22 responsibilities?
 23 **A. I was basically writing -- building the**
 24 **tools that the support techs used while on the --**
 25 **on the phone with customers.**

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1 Q. Okay. And at Schawk, what was your
 2 role?
 3 **A. I was software engineer and basically**
 4 **was building a lot of the internal tools they used**
 5 **for, like, imaging preprocessing.**
 6 Q. And G.A. Sullivan?
 7 **A. Yeah. G.A. Sullivan I was a**
 8 **consultant, and so I was -- they basically -- we**
 9 **did deals with different companies for us to go**
 10 **build their internal systems for them.**
 11 Q. And G.A. Sullivan was the consultancy?
 12 **A. Yeah. Yep.**
 13 Q. And Infozerk, what was your role?
 14 **A. Yeah. So I was -- it was basically**
 15 **doing consulting for companies; going in and**
 16 **helping them build, like, large enterprise software**
 17 **programs.**
 18 Q. All right. Let's turn back to Kevel,
 19 or would you prefer that I call it "Adzerk"?
 20 **A. Either one.**
 21 Q. Okay. In your current position, so at
 22 a high level, what is Kevel's business?
 23 **A. At a high level, we -- we built a set**
 24 **of APIs that customers use to build ad platforms;**
 25 **so, essentially, an ad-serving API.**

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1 Q. And who are Kevel's customers, category
 2 of customers?
 3 **A. Yeah, categories? So we work with a**
 4 **lot of marketplaces; e-commerce companies, Fintech,**
 5 **and that includes kind of banks as well as, like,**
 6 **newer Fintech apps.**
 7 **And then we also work with digital**
 8 **at-home companies, and then, you know, I'd say a**
 9 **handful of, like, ad networks. So it's a pretty**
 10 **large variety of customer types.**
 11 Q. And what is your role at Kevel?
 12 **A. I'm the CEO.**
 13 Q. And what are your responsibilities as
 14 Kevel's CEO?
 15 **A. Largely, managing our leadership team,**
 16 **just about whatever -- whatever is asked of me.**
 17 Q. And how has your role in the company
 18 changed since Kevel was founded?
 19 **A. Yeah. I mean, early on, I was writing**
 20 **a lot of code; I was, you know, very involved in**
 21 **different sales. Now, obviously, as we've gotten**
 22 **larger, I'm less involved. And they don't let me**
 23 **write code anymore. I'm more involved in, you**
 24 **know, the overall management of the company versus**
 25 **the, you know, individual customers or projects.**

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1 Q. Did you found Kevel?
 2 **A. Yes.**
 3 Q. In your time at Kevel, have you
 4 interacted with internet publishers?
 5 **A. Yes.**
 6 Q. How often?
 7 **A. I mean, early on, we were -- like, I**
 8 **was selling to those publishers, you know. Up**
 9 **until today, I still -- like, with some of our**
 10 **larger publishers, we will, you know -- I'll still**
 11 **be involved in -- in talking with large customers.**
 12 Q. And in your time at Kevel, have you
 13 interacted with advertisers, ad agencies or
 14 demand-side platforms?
 15 MS. MORGAN: Objection to form.
 16 BY MS. AGNEW:
 17 Q. Let me rephrase.
 18 In your time at Kevel, have you
 19 interacted with advertisers?
 20 MS. MORGAN: Objection to form.
 21 BY MS. AGNEW:
 22 Q. You can answer.
 23 **A. Yeah, I'm trying to figure out, like,**
 24 **do -- interact -- we -- we don't work directly with**
 25 **advertisers. We've had discussions with them.**

<p style="text-align: right;">Page 25</p> <p>1 BY MS. AGNEW:</p> <p>2 Q. If Google were to integrate AdX with</p> <p>3 Kevel's publisher ad server in the same way that</p> <p>4 Google integrates AdX with Google's GAM, what</p> <p>5 impact, if any, would that have on competition?</p> <p>6 MS. MORGAN: Objection to form.</p> <p>7 THE WITNESS: I believe it would allow</p> <p>8 us to compete on a more level playing field when</p> <p>9 talking to a traditional publisher.</p> <p>10 BY MS. AGNEW:</p> <p>11 Q. Okay. Changing course a little. In</p> <p>12 what ways, if any, do you view Kevel's publisher ad</p> <p>13 server as being more innovative than Google's</p> <p>14 publisher ad server?</p> <p>15 A. I believe that --</p> <p>16 MS. MORGAN: Objection to form.</p> <p>17 THE WITNESS: I believe that our</p> <p>18 approach to APIs and the fact that we allow our --</p> <p>19 our customers to really build innovative ad types</p> <p>20 and -- and units is -- is very innovative compared</p> <p>21 to what GAM offers.</p> <p>22 BY MS. AGNEW:</p> <p>23 Q. And what is your basis for saying that?</p> <p>24 A. I think when we see our -- the</p> <p>25 customers that come to us are coming to us because</p>	<p style="text-align: right;">Page 27</p> <p>1 to just serve, you know, classic display ads, then</p> <p>2 we actually tell them they should probably just use</p> <p>3 GAM.</p> <p>4 If they're looking to build sponsored</p> <p>5 listings or native or build an auction, that's when</p> <p>6 we -- we believe that we are a better solution.</p> <p>7 Q. So why would you tell those publishers</p> <p>8 to use GAM?</p> <p>9 A. Mainly for the --</p> <p>10 MS. MORGAN: Objection to form.</p> <p>11 THE WITNESS: Mainly for the demand</p> <p>12 from AdX and then also for the integrations that</p> <p>13 GAM provides.</p> <p>14 BY MS. AGNEW:</p> <p>15 Q. In the past five to ten years, who has</p> <p>16 been more innovative in the publisher ad server</p> <p>17 business, Kevel or Google?</p> <p>18 MS. MORGAN: Objection to form.</p> <p>19 THE WITNESS: Kevel.</p> <p>20 BY MS. AGNEW:</p> <p>21 Q. What is your basis for saying that?</p> <p>22 A. I think just based on -- if you look at</p> <p>23 our customer set and what they're doing with our</p> <p>24 product, you see a lot more innovation from our</p> <p>25 customers than you see from the customers that are</p>
<p style="text-align: right;">Page 26</p> <p>1 they want that flexibility and that ability for</p> <p>2 them to innovate, and they usually looked at GAM</p> <p>3 first.</p> <p>4 Q. And what is it about GAM that is</p> <p>5 inflexible?</p> <p>6 A. GAM is focused --</p> <p>7 MS. MORGAN: Objection to form.</p> <p>8 THE WITNESS: Sorry.</p> <p>9 GAM is focused on really serving the</p> <p>10 more standard units of display or -- or a certain</p> <p>11 type of native and is not geared towards things</p> <p>12 like sponsored listings or very native ads.</p> <p>13 BY MS. AGNEW:</p> <p>14 Q. And what is a traditional ad unit?</p> <p>15 A. Usually banners, so 300 by 250, 728 by</p> <p>16 90, banners that are shown on the -- on the web.</p> <p>17 Q. And is that what you meant a moment ago</p> <p>18 by "standard units"?</p> <p>19 A. Yes.</p> <p>20 Q. In what ways do you view -- if any --</p> <p>21 do you view Kevel's publisher ad server as being a</p> <p>22 better product than Google's GAM?</p> <p>23 A. I think it depends on the -- which kind</p> <p>24 of segment or market that we're talking about.</p> <p>25 When we talk to a traditional publisher who wants</p>	<p style="text-align: right;">Page 28</p> <p>1 using GAM.</p> <p>2 Q. For publishers who use programmatic</p> <p>3 display advertising, why do those publishers choose</p> <p>4 Google's publisher ad server even though you</p> <p>5 believe Kevel is more innovative?</p> <p>6 MS. MORGAN: Objection to form.</p> <p>7 THE WITNESS: I believe it is due to</p> <p>8 the integration with AdX and the tight coupling of</p> <p>9 Google demand to GAM.</p> <p>10 BY MS. AGNEW:</p> <p>11 Q. So how would you describe GAM's</p> <p>12 position in the publisher ad server business today?</p> <p>13 A. I think they're dominant.</p> <p>14 Q. And why do you describe Google's GAM as</p> <p>15 being the dominant publisher ad server?</p> <p>16 A. I don't -- I don't know of any</p> <p>17 publishers that aren't using GAM, traditional</p> <p>18 publishers.</p> <p>19 MS. AGNEW: Let's go off the record for</p> <p>20 a second.</p> <p>21 THE VIDEOGRAPHER: Off record at</p> <p>22 10:37 a.m.</p> <p>23 * * *</p> <p>24 (Whereupon, there was a recess in the</p> <p>25 proceedings from 10:37 a.m. to 10:48 a.m.)</p>

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1 * * *

2 THE VIDEOGRAPHER: On record at

3 10:48 a.m.

4 BY MS. AGNEW:

5 Q. So, Mr. Avery, I wanted to talk about

6 what you mentioned before about Kevel being an

7 API-based ad serving platform. What is an API?

8 **A. An API is a application programming**

9 **interface.**

10 Q. And how does an API function? What's

11 its -- what's its purpose?

12 **A. Essentially, it's a -- it's a way for**

13 **servers or computers to talk directly to each other**

14 **to provide a service.**

15 Q. And why is Kevel's publisher ad server

16 API-based?

17 **A. To really enable innovation from our**

18 **customers, to allow them to really build unique ad**

19 **platforms.**

20 Q. So APIs allow customers to customize

21 their ads?

22 MS. MORGAN: Objection to form.

23 **THE WITNESS: Correct.**

24 MS. AGNEW: I will now introduce what I

25 will mark as Kevel's Exhibit 1.

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1 (AVERY EXHIBIT 1, Emails, top one dated

2 4/25/19, Subject: Question about your tweet:),

3 Bates KVL00000945-947, was marked for

4 identification.)

5 BY MS. AGNEW:

6 Q. This is the document with the Bates

7 ending in 945.

8 Mr. Avery, please take a moment to

9 review while I describe it for the record.

10 For the record, this is an email chain

11 where the top email is from Mr. Avery, dated

12 April 25th, 2019.

13 Mr. Avery, just let me know when you're

14 ready.

15 **A. I'm done.**

16 Q. Thank you.

17 So is this document an email chain

18 involving you and Sarah Sluis from April 2019?

19 **A. Yes.**

20 Q. And who is Ms. Sluis?

21 **A. She's a reporter with AdExchanger.**

22 Q. Is it fair to say that at the time that

23 you wrote these emails, you were knowledgeable

24 about Kevel's efforts to compete in the publisher

25 ad server business?

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1 MS. MORGAN: Objection to form.

2 **THE WITNESS: Yes.**

3 BY MS. AGNEW:

4 Q. Do you regularly use email when

5 performing your duties as CEO of Kevel?

6 **A. Yes.**

7 Q. Has this been the case since at least

8 2019?

9 **A. Yes.**

10 Q. To your knowledge, has Kevel maintained

11 this email in the regular course of its business?

12 **A. Yes.**

13 Q. So I'm going to walk you through some

14 of the communications contained in this exchange.

15 First, please go to Page 2 of the document to the

16 last email at the bottom that then runs onto

17 Page 3. Do you see that?

18 **A. Yes.**

19 Q. So this is an email from Ms. Sluis to

20 you on April 24th, 2019, at 7:52 p.m. In the first

21 full paragraph of that email, Ms. Sluis writes,

22 quote: Saw the exchange with Steph on Twitter. I

23 thought that AdWords could *kinda* integrate with

24 other ad servers, close quote.

25 Do you see that?

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1 **A. Yes.**

2 Q. Did I read that correctly, leaving

3 aside the link embedded in the text?

4 **A. Yes.**

5 Q. Let's go to the email above that which

6 you sent to Ms. Sluis on April 24th, 2019, at

7 10:17 p.m., to the second full sentence starting

8 with "But AdX."

9 Do you see that?

10 **A. Yes.**

11 Q. So here you write: But AdX is almost

12 completely tied to DFP (Ad Manager). We have

13 worked with some customers who have AdX tags,

14 meaning they can put them in our ad server or

15 another, but no one really wants to use tags

16 anymore since you end up with passbacks and other

17 inefficiencies.

18 Did I read that correctly?

19 **A. Yes.**

20 Q. Now, please turn to the first page of

21 the document to the second email from the top.

22 This is an email from Ms. Sluis to you, sent on

23 April 25th, 2019, at 12:54 p.m.

24 At the start of the email, Ms. Sluis

25 writes, quote: I see! So a tag is essentially

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1 **A. I didn't like them.**
 2 Q. Aside from not liking them, did you
 3 have any other opinion about whether Google had a
 4 valid basis for that response?
 5 **A. I -- I don't know how their internal**
 6 **system works, but I believe that their -- if every**
 7 **other exchange can integrate with us in a**
 8 **server-to-server fashion that it should definitely**
 9 **be technically possible for Google to do the same.**
 10 Q. And what is your basis for saying that?
 11 **A. Just our experience with every other ad**
 12 **exchange and being able to connect in that way.**
 13 Q. What makes you think that Google would
 14 be able to integrate in that way?
 15 MS. MORGAN: Objection to form.
 16 **THE WITNESS: Because I think that**
 17 **they -- like, ad exchanges all work fairly**
 18 **similarly and based around OpenRTB. And they also**
 19 **do connect on pushing demand out to other**
 20 **exchanges, just not from the supply side.**
 21 BY MS. AGNEW:
 22 Q. What is your understanding of how
 23 technically challenging it would be for Google to
 24 integrate AdX with Kevel's publisher ad server in
 25 the same way that Google integrates Google's ad

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1 exchange with Google's publisher ad server?
 2 MS. MORGAN: Objection to form.
 3 **THE WITNESS: I don't know.**
 4 BY MS. AGNEW:
 5 Q. Has integrating with other exchanges
 6 with Kevel's publisher ad server been technically
 7 challenging?
 8 **A. No.**
 9 Q. Okay. Let's move back to the document.
 10 I am looking now on the same page on
 11 the same email on Page 2, which you wrote to
 12 Ms. Sluis on April 24th, 2019, at 10:17 p.m.
 13 Do you see that email?
 14 **A. Yes.**
 15 Q. Here you write, quote: Almost every ad
 16 server has gone out of business because of this
 17 integration between AdX and Ad Manager. Publishers
 18 may want to use another ad server but they would
 19 end up giving up a chunk of revenue from AdX. It
 20 turns out monopolies are pretty effective, close
 21 quote.
 22 Did I read that correctly?
 23 **A. Yes.**
 24 Q. What does the "integration between AdX
 25 and Ad Manager" refer to?

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1 **A. The integration between AdX and Google**
 2 **Ad Manager.**
 3 Q. And what does the word "monopoly" refer
 4 to here?
 5 **A. The -- essentially, the position that**
 6 **Google Ad Manager has in the publisher market.**
 7 Q. Is that in the publisher market or the
 8 publisher ad server market?
 9 MS. MORGAN: Objection to form.
 10 **THE WITNESS: Publisher ad server**
 11 **market.**
 12 BY MS. AGNEW:
 13 Q. Thank you.
 14 And why do you view Google's publisher
 15 ad server GAM as being a monopoly in the publisher
 16 ad server market?
 17 MS. MORGAN: Objection to form.
 18 **THE WITNESS: I think they have -- they**
 19 **have over -- you know, over 90 percent or more of**
 20 **publishers are using GAM. But --**
 21 BY MS. AGNEW:
 22 Q. Why do you say that publishers would
 23 have to give up a chunk of revenue from Google's
 24 ad exchange if publishers chose to not use Google's
 25 publisher ad server?

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1 **A. Because of the -- the tight integration**
 2 **with AdX and the fact that other ad servers,**
 3 **including Kevel, can't integrate with AdX in the**
 4 **same way that GAM integrates with AdX.**
 5 Q. You also refer to other publisher ad
 6 servers as going out of business. Which publisher
 7 ad servers have gone out of business in the past
 8 five to ten years?
 9 **A. The -- I believe the ones I was**
 10 **referring to here were -- OpenX closed their**
 11 **ad-serving product, and they're only now an**
 12 **ad exchange. OAS, which may have had a different**
 13 **name, which used to be a publisher ad server, had**
 14 **closed down. And then AppNexus also closed part of**
 15 **their publishing ad server platform.**
 16 Q. Do you know why those publisher ad
 17 servers have gone out of business?
 18 MS. MORGAN: Objection to form.
 19 **THE WITNESS: I can only speculate.**
 20 BY MS. AGNEW:
 21 Q. To the best of your knowledge, why have
 22 those publisher ad servers gone out of business?
 23 MS. MORGAN: Objection to form.
 24 **THE WITNESS: Because the majority of**
 25 **publishers choose to work with GAM, largely based**

<p style="text-align: right;">Page 49</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MS. AGNEW:</p> <p>3 Q. And what is Kevel's pitch to publishers</p> <p>4 today?</p> <p>5 A. Well, our pitch to -- to our -- to</p> <p>6 publishers is that they should build native -- they</p> <p>7 should build their own ad platforms on top of our</p> <p>8 APIs. But we don't actually pitch that to</p> <p>9 traditional publishers very often because they are</p> <p>10 more likely just to serve programmatic display.</p> <p>11 BY MS. AGNEW:</p> <p>12 Q. So is that your pitch to marketplaces?</p> <p>13 A. Yes.</p> <p>14 Q. And what did you mean by "marketplaces"</p> <p>15 earlier?</p> <p>16 A. We define "marketplace" as anyone who</p> <p>17 is selling -- who is selling goods or services that</p> <p>18 they aren't creating. So anything from like an</p> <p>19 eBay to an Amazon would be a marketplace.</p> <p>20 Q. And is that your pitch to e-commerce</p> <p>21 retailers?</p> <p>22 A. Yes.</p> <p>23 Q. And what is an e-commerce retailer?</p> <p>24 A. Really, anyone who is -- who is doing</p> <p>25 commerce online.</p>	<p style="text-align: right;">Page 51</p> <p>1 Google's ad exchange, AdX. In terms of size, how</p> <p>2 does AdX compare to other ad exchanges -- like</p> <p>3 Index, PubMatic or AppNexus -- for programmatic</p> <p>4 display advertising?</p> <p>5 MS. MORGAN: Objection to form.</p> <p>6 THE WITNESS: I believe it is the</p> <p>7 largest.</p> <p>8 BY MS. AGNEW:</p> <p>9 Q. And what is your basis for saying it is</p> <p>10 the largest?</p> <p>11 A. Based on the publishers that we talked</p> <p>12 to, it represents the largest portion of their</p> <p>13 revenue.</p> <p>14 Q. In your experience, which ad exchange</p> <p>15 is the most essential for publishers who want</p> <p>16 programmatic demand for open web display</p> <p>17 advertising?</p> <p>18 A. AdX.</p> <p>19 Q. And why do you view AdX as the</p> <p>20 essential exchange for display advertising --</p> <p>21 programmatic display advertising?</p> <p>22 MS. MORGAN: Objection to form.</p> <p>23 THE WITNESS: AdX has demand both</p> <p>24 from -- from Google's DSP as well as from their</p> <p>25 Google Ad network, and that demand is not available</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. But in the past five to ten years,</p> <p>2 Kevel has not been able to convince major</p> <p>3 publishers to substitute their programmatic display</p> <p>4 advertising with other types of ads; is that</p> <p>5 correct?</p> <p>6 MS. MORGAN: Objection to form.</p> <p>7 THE WITNESS: Correct.</p> <p>8 BY MS. AGNEW:</p> <p>9 Q. Over the past five to ten years, why</p> <p>10 has Kevel not been successful in convincing major</p> <p>11 publishers to use other types of ads other than</p> <p>12 programmatic display on their websites?</p> <p>13 A. I think because for traditional</p> <p>14 publishers, programmatic and especially display ads</p> <p>15 are -- are potentially the right ad for them to</p> <p>16 serve.</p> <p>17 Q. And why is that?</p> <p>18 A. I think when you're -- if your business</p> <p>19 is creating articles and -- and you're kind of</p> <p>20 based on people reading those articles, viewing</p> <p>21 them, then traditional display ads are, you know,</p> <p>22 very similar to traditional newspaper ads, and they</p> <p>23 capture the eyeballs of the people reading those</p> <p>24 articles.</p> <p>25 Q. Earlier, we talked a little bit about</p>	<p style="text-align: right;">Page 52</p> <p>1 anywhere else.</p> <p>2 BY MS. AGNEW:</p> <p>3 Q. And what is Google's DSP?</p> <p>4 A. I believe it's called DV360.</p> <p>5 Q. Okay. And what impact, if any, does</p> <p>6 the link between Google's publisher ad server and</p> <p>7 Google's advertiser demand have on competition in</p> <p>8 the advertising exchange market?</p> <p>9 MS. MORGAN: Objection to form.</p> <p>10 THE WITNESS: It gives them a unique</p> <p>11 source of demand that's not available to other ad</p> <p>12 exchanges, which means that it's -- the other ad</p> <p>13 exchanges essentially can't compete in a -- on a</p> <p>14 level playing field because they aren't working</p> <p>15 with all the same demand.</p> <p>16 MS. AGNEW: All right. Thank you,</p> <p>17 Mr. Avery, for answering my questions. At this</p> <p>18 time, I'd like to reserve the balance of my time or</p> <p>19 at least a reasonable portion of it for redirect.</p> <p>20 I pass the witness.</p> <p>21 MS. MORGAN: Great.</p> <p>22 MS. AGNEW: Let's go off the record.</p> <p>23 MS. MORGAN: Can I take ten minutes to</p> <p>24 get organized? Is there a room for a few minutes?</p> <p>25 THE VIDEOGRAPHER: Let's go off the</p>

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1 Q. How easy or difficult is it for a
 2 traditional publisher -- no. Sorry. Let me move
 3 on.
 4 So you gave testimony a little earlier
 5 about publishers -- publisher -- publishers using
 6 more than one publisher ad server. What
 7 understanding do you have on whether traditional
 8 publishers use multiple publisher ad servers?
 9 **A. I think a decent number of publishers**
 10 **use multiple ad servers.**
 11 Q. Do they use multiple publisher ad
 12 servers for programmatic display advertising?
 13 **A. No.**
 14 Q. So what publisher ad server do they use
 15 for programmatic display advertising?
 16 **A. GAM.**
 17 MS. MORGAN: Objection to form.
 18 **THE WITNESS: GAM.**
 19 BY MS. AGNEW:
 20 Q. So counsel also asked you about
 21 speaking with the DOJ recently and in the -- in --
 22 between 2019 and 2021, correct?
 23 **A. Yes.**
 24 Q. Let me show you another document. Just
 25 one moment.

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1 **A. No problem.**
 2 MS. AGNEW: I would like to introduce
 3 what I've marked as Avery Exhibit 4.
 4 (AVERY EXHIBIT 4, Twitter exchange
 5 dated April 24, 2019, was marked for
 6 identification.)
 7 BY MS. AGNEW:
 8 Q. So this is a PDF document containing a
 9 screenshot of a Twitter exchange between Mr. Avery
 10 and Stephanie Layser, dated April 24, 2019,
 11 correct?
 12 **A. Yes.**
 13 Q. Mr. Avery, who is Stephanie Layser?
 14 **A. I actually don't know.**
 15 Q. In her tweet, Ms. Layser writes that,
 16 quote: Pubs should be asking one question to
 17 Google: Do you plan on going into another header
 18 bidding or S2S solution? Because if the answer is
 19 NO -- capital N, capital O -- they are tying DFP to
 20 AdX to AdWords to pubs -- so pubs can't have
 21 control and no option to switch ad servers and
 22 achieve optimal yield, close quote.
 23 Do you see that?
 24 **A. Yes.**
 25 Q. Did I read that correctly?

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1 **A. Yes.**
 2 Q. And below that, you respond also on
 3 April 24th, 2019, quote: They have been doing this
 4 for years - it's why most other display ad servers
 5 have shut down, close quote.
 6 Do you see that?
 7 **A. Yes.**
 8 Q. Did I read it correctly?
 9 **A. Yes.**
 10 Q. What did you understand Ms. Layser to
 11 mean when she referred to Google tying DFP to AdX
 12 to AdWords?
 13 MS. MORGAN: Objection. Form.
 14 **THE WITNESS: Yeah, so when we -- when**
 15 **we talk about AdX, AdX has unique demand because**
 16 **it's both demand from DV360 as well as from**
 17 **AdWords. And that only being available through**
 18 **AdX, what Stephanie is saying that if AdX could**
 19 **header bid or bid into other solutions, it would**
 20 **let publishers choose a different ad server in the**
 21 **market.**
 22 BY MS. AGNEW:
 23 Q. So you just testified that AdX could
 24 header bid or bid into other solutions that would
 25 let publishers choose a different ad server in the

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1 market. Were you referring to publisher ad server?
 2 **A. Yes.**
 3 Q. At the time, did Google -- Google's ad
 4 exchange bid into header bidding?
 5 **A. No.**
 6 MS. MORGAN: I'm -- I'm sorry.
 7 Objection. Form.
 8 BY MS. AGNEW:
 9 Q. And what did you mean when you said
 10 that Google has been doing this for years?
 11 **A. Essentially, that they haven't been --**
 12 **they haven't been -- basically, I think what I --**
 13 **what I meant by when I said they've been doing this**
 14 **for years is that they've been tying AdWords and**
 15 **AdX to DFP or GAM and that that's what's pushed**
 16 **other ad servers out of the market.**
 17 Q. And what did you mean when you said
 18 "it's why most other display ad servers have shut
 19 down"?
 20 **A. Just that basically because they've**
 21 **tied this unique demand to their ad server, other**
 22 **ad servers can't compete in that market.**
 23 Q. And what opinion, if any, were you
 24 expressing about the effects on competition or
 25 other publisher ad servers that result from the

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1 links between DFP, AdX and AdWords?
2 **A. Yeah, I think it --**
3 MS. MORGAN: Objection to form.
4 **THE WITNESS: I think it makes it**
5 **almost impossible for publisher ad servers to**
6 **compete against GAM in the market.**
7 BY MS. AGNEW:
8 Q. And at the time you wrote this tweet,
9 had you spoken to the DOJ?
10 **A. I don't believe so.**
11 Q. So you were critical of the links
12 between DFP, AdX and AdWords before speaking with
13 DOJ?
14 **A. Yes.**
15 MS. MORGAN: Objection to form.
16 **THE WITNESS: Yes.**
17 BY MS. AGNEW:
18 Q. So earlier today you said that, to
19 summarize, the links between DFP, AdX and AdWords
20 have negative effects, correct?
21 **A. Yes.**
22 MS. MORGAN: Objection to form.
23 BY MS. AGNEW:
24 Q. Was today the first time you have said
25 that the links between DFP, AdX and AdWords have

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1 negative effects?
2 **A. No.**
3 MS. AGNEW: I'm going to ask to go off
4 the record again.
5 **THE VIDEOGRAPHER: Off record at**
6 **12:44 p.m.**
7 * * *
8 (Whereupon, there was a recess in the
9 proceedings from 12:44 p.m. to 12:48 p.m.)
10 * * *
11 **THE VIDEOGRAPHER: On record at**
12 **12:48 p.m.**
13 BY MS. AGNEW:
14 Q. So, Mr. Avery, I'd like to return to
15 Avery Exhibit 1, the document with Bates ending in
16 945.
17 **A. Okay.**
18 Q. So we've discussed this document
19 before, and I just wanted to draw your attention
20 back to the statement you made at the very top
21 email on Page 1 of the exchange, which I will read
22 again for the record.
23 MS. MORGAN: I'm just going to object
24 that this outside the scope of the cross, so it's
25 not proper material for redirect.

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1 BY MS. AGNEW:
2 Q. Here you write, quote: People are
3 doing banner ads are so tied to GAM it's not even
4 funny, close quote.
5 **A. Yes.**
6 Q. Did I read that correctly?
7 **A. Yes.**
8 Q. When you wrote this email, had you
9 spoken with the DOJ?
10 **A. I don't believe so.**
11 MS. AGNEW: All right. I pass the
12 witness.
13 MS. MORGAN: I have no further
14 questions for you today, Mr. Avery.
15 Congratulations, you're done.
16 I think we can go off the record.
17 **THE VIDEOGRAPHER: This concludes**
18 **today's deposition of James Avery. The time is**
19 **12:49 p.m. We are now off record.**
20 **(Deposition concluded at 12:49 p.m.)**
21 **(Signature reserved.)**
22
23
24
25

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1 SIGNATURE OF DEPONENT
2 I, the undersigned, JAMES H. AVERY, do
3 hereby certify that I have read the foregoing
4 deposition transcript and find it to be a true and
5 accurate transcription of my testimony, with the
6 following corrections, if any:
7
8 PAGE LINE CHANGE
9 _____
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25 JAMES H. AVERY

CERTIFICATE OF REPORTER

I, Cindy A. Hayden, Registered Merit
Reporter and Notary Public for the State of North
Carolina at Large, do hereby certify:

That the foregoing deposition was taken
before me on the date and at the time and location
stated on Page 1 of this transcript; that the
deponent was duly sworn to testify to the truth,
the whole truth and nothing but the truth; that the
testimony of the deponent and all objections made
at the time of the examination were recorded
stenographically by me and were thereafter
transcribed; that the foregoing deposition as typed
is a true, accurate and complete record of the
testimony of the deponent and of all objections
made at the time of the examination to the best of
my ability.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof. Witness my
hand, this 16th of August, 2023, at Concord,
Cabarrus County, North Carolina.

Cindy A. Hayden

Cindy A. Hayden,
Registered Merit Reporter
Notary Public
State of North Carolina at Large
My Commission expires:
April 7, 2027